



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY TIDEWATER REGIONAL OFFICE

L. Preston Bryant, Jr.
Secretary of Natural Resources

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David K. Paylor
Director

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Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

ISSUED TO

CAPITAL CONCRETE, INC.

Registration No. VAG110036

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §62.1-44.15(8a) and §62.1-44.15(8d), between the State Water Control Board and Capital Concrete, Inc., for the purpose of resolving certain violations of environmental law and/or regulations.

SECTION B: Definitions:

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code §10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.

6. "Regulation" means 9 VAC 25-193-10 *et seq.* - the Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation For Concrete Products Facilities.
7. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
8. "Permit" means VPDES General Permit for Concrete Products Facilities No. VAG11, which became effective on October 1, 2003 and expires on September 30, 2008.

SECTION C: Finding of Facts and Conclusions of Law

1. Capital Concrete, Inc. ("Capital") owns and operates a ready-mixed concrete plant located at 400 Stapleton Avenue, Norfolk, Virginia ("the facility"). Capital is subject to the Permit through Registration No. VAG110036, which was issued October 17, 2003 and expires when the Permit expires on September 30, 2008. The Permit authorizes Capital to discharge storm water associated with industrial activities via Outfall 001.
2. On March 12, 2007, DEQ staff ("Staff") conducted a routine inspection of the facility and observed an unauthorized discharge of process wastewater from Outfall 001. Process wastewater is normally treated on-site and reused in the process of making concrete. The unauthorized discharge was occurring because process wastewater flowing to a gravel pit was overflowing a collection barrel in the pit onto the ground and then flowing into Outfall 001; a sump pump in the barrel was observed to not be operational and therefore could not pump the process wastewater for reuse. The volume of the discharge was not measured. The discharge was not reported to DEQ as required by the Permit. According to Capital staff, the sump pump above-ground power cord had been disconnected to prevent vehicle traffic from damaging it.
3. Part III.F of the Permit prohibits discharges into state waters except in compliance with the Permit. The Permit authorizes Capital to discharge storm water associated with industrial activities via outfall 001. The Permit does not authorize Capital to discharge process wastewater. Capital violated its Permit by causing the discharge of process wastewater from its Norfolk facility via outfall 001, which was observed by staff during a routine annual inspection on March 12, 2007. This was similar to a violation addressed by a Consent Special Order issued to Capital on September 28, 2005 and containing a \$3,220 civil charge. The barrel with sump pump was part of corrective action required by the September order to prevent the overflow of process wastewater into Outfall 001.
4. Part III.G of the Permit requires Capital to report any unauthorized discharges to DEQ immediately upon discovery of the discharge, but in no case later than 24 hours of said discovery. The Permit also requires Capital to provide a written

report to DEQ within five days of discovery of the discharge. Capital violated its Permit by failing to report the unauthorized discharge to DEQ in accordance with its Permit. This was also a repeat of a violation addressed by the September 2005 order.

5. On April 27, 2007, DEQ received a response by letter from Capital regarding the report from the March 12, 2007 compliance inspection. Capital reported in the letter that an underground power line had been installed to the sump pump, allowing it to be energized all the time without being affected by vehicle traffic. Capital also reported that the 2006 annual Discharge Monitoring Report ("DMR") required by the Permit (Part I.A.5) to be submitted by January 10 of each year had been submitted to DEQ; DEQ did not have a record of this submittal and Capital resubmitted the DMR with the April 27, 2007 letter.
6. On May 7, 2007, DEQ issued Notice of Violation ("NOV") W2007-04-T-1004 to Capital which included the above noted deficiencies referenced in paragraph two of this Order. The NOV also listed the failure by Capital to submit the 2006 annual DMR for the facility.

SECTION D: Agreement and Order

Accordingly the State Water Control Board by virtue of the authority granted by Va. Code § 62.1-44.15(8a) and (8d), orders Capital, and Capital agrees to comply with the Permit. In addition, the Board orders Capital, and Capital voluntarily agrees to pay a civil charge of \$14,000 within 30 days of the effective date of this Order, in settlement of the violations cited in this Order. The payment shall include Capital's Federal Identification Number and shall reference that payment is being made as a requirement of this Order. Payment shall be made by check, payable to the Treasurer of Virginia, delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Capital, for good cause shown by Capital, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the above referenced Notice(s) of Violation. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may

be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. For purposes of this Order and subsequent actions with respect to this Order, Capital admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Capital consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Capital declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2 - 4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Capital to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Capital shall be responsible for failure to comply with any of the terms and conditions by this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. Capital shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Capital shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which Capital intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Capital. Notwithstanding the foregoing, Capital agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Capital. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Capital from its obligation to comply with any statute, regulation, Permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, Capital voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 11th day of April, 2008.

Francis L. Daniel
Francis L. Daniel

Capital Concrete, Inc. voluntarily agrees to the issuance of this Order.

By: [Signature]
Date: 12/26/07

Commonwealth of Virginia
City/County of Norfolk

The foregoing document was signed and acknowledged before me this 26 day of December, 2007, by HELEN WHITEMORE, who is
(name)

Vice President of Capital Concrete, Inc., on behalf of Capital.
(title)

Rita M. Turner
Notary Public

My commission expires: December 30, 2010

